

THE FACILITATION OF NATIONAL AND INTERNATIONAL ACCOUNTABILITY MECHANISMS: THE CREATION OF THE INTERNATIONAL LEGAL ASSISTANCE CONSORTIUM (ILAC)

*Mark S. Ellis**

I.	INTRODUCTION	408
II.	THE ILAC MISSION	409
III.	THE STRUCTURE OF ILAC	410
IV.	THE GOVERNANCE OF ILAC	411
V.	COORDINATING MECHANISM FOR ILAC	411
	A. <i>Judicial Accountability Response Unit</i>	412
	B. <i>Judicial Development Response Unit</i>	413
VI.	CONCLUSION	414

In early 1997, Professor M. Cherif Bassiouni¹ assembled a group of individuals to discuss the creation of a set of guiding principles for combatting impunity for international crimes. The group included myself, Professor Michael Scharf,² Professor Paul Williams,³ and Professor Madeline Morris.⁴ During a period of six months, this group worked on drafting a set of guidelines that would prohibit states from granting amnesty, pardons, or token sentences to persons responsible for committing international crimes. Once completed, the guidelines would be provided to the international and United Nations community for consideration and possible adoption.

* Mark S. Ellis is Executive Director of the American Bar Association's Central and East European Law Initiative (CEELI).

1. Cherif Bassiouni is a Professor of Law at DePaul University School of Law and was Vice Chair, U.N. Preparatory Committee on the Establishment of a Permanent International Criminal Court.

2. Michael Scharf is an Associate Professor of Law and Director of the Center for International Law and Policy, New England School of Law.

3. Paul Williams is an Associate Professor of Law at American University; Senior Associate, Carnegie Endowment for International Peace; and Executive Director of the Public International Law and Policy Group.

4. Madeline Morris is a Professor of Law at Duke University School of Law.

One component of the proposed guidelines is the creation of a mechanism to facilitate and coordinate international efforts in bringing the perpetrators of international crimes to justice and in rehabilitating the national judicial systems of affected states. Madeline Morris and I were assigned to draft this section of the guidelines.

I. INTRODUCTION

Justice systems are among those institutions that suffer most during violent conflicts. The collapse of state institutions like the judiciary is a fundamental cause for the subsequent failure of the legal system and the general breakdown of the rule of law. In a post-conflict intervention, the international community must focus its efforts beyond peacekeeping and humanitarian missions. There must be comprehensive efforts to support structures that will ensure a lasting peace. Ensuring accountability and rehabilitating the judicial system are fundamental to this effort.

There is a general consensus that the United Nations, international agencies, Non-Governmental Organizations (NGOs), and individual governments providing post-conflict assistance in the justice sector need to better coordinate their activities and ensure that programs are complementary and collectively meeting the needs of the host country. There is currently no international mechanism to bring together NGOs, national governments, and United Nations agencies for post-conflict accountability and judicial rehabilitation. There is also a need to react rapidly to a post-conflict situation in order to gain credibility and separate support from local NGOs. At two recent international conferences,⁵ individuals representing NGOs, national governments, international organizations, and academia met to recommend ways to improve the international community's approach to ensure accountability for war criminals and met for assisting countries in judicial rehabilitation during a post-conflict period. One suggestion that emerged from the first conference and was further discussed at the second conference was the creation of a *judicial response unit* that could quickly respond to the immediate and somewhat longer-term needs of judicial systems in post-conflict environments.

This memo sets forth a framework for the creation of the International Legal Assistance Consortium (ILAC). In essence, ILAC, in the aftermath of violent conflicts, would be able to facilitate and coordinate NGO, government, and United Nations efforts in two crucial areas:

5. Both the March, 1997 and the October, 1997 conferences were organized by the Stanley Foundation.

bringing war criminals to justice, and rehabilitating the national judicial and legal systems.

ILAC would work closely with international peace keepers, who assume *de facto*, if not *de jure*, involvement in law enforcement functions during a post-conflict situation. To date, peace keepers, civilian police, and international police monitors have been forced to operate in environments where the local criminal justice system has been decimated or is simply non-existent.

ILAC would enter the post-conflict environment simultaneously with, or as a close follow-up to, peacekeeping operations. Serving as a locus of international legal assistance and domestic NGO involvement, ILAC would coordinate the efforts of specialized agencies, NGOs, and donor governments. Bringing together ideas and people, ILAC would mobilize forces to sign onto a common set of principles and goals and to operate in a coordinated and efficient manner.

ILAC would also focus on pressuring national governments to pursue war crimes and human rights abuse prosecutions. Countries emerging from domestic or international conflict are generally fragile and are almost certainly grappling with the traumatic effects of recently committed war crimes and human rights abuses. Often, members of emerging ruling governments have themselves violated international humanitarian law and are thus more likely to advocate for a general policy of amnesty, or other form of impunity, rather than a policy of accountability. Governments in a post-conflict environment will frequently argue that impunity and quick reconciliation are the only possible avenues, considering that the destroyed judicial system is not capable of prosecuting the alleged human rights abuses. ILAC will foster governments' compliance with their international obligations to prosecute alleged war criminals and human rights violators. In addition, ILAC's presence may help to deter further violations of international humanitarian law.

II. THE ILAC MISSION

ILAC will be an association of international NGOs working together to promote the rule of law throughout the world. ILAC will work closely with local NGOs in affected States to ensure their immediate involvement in the assistance projects.

Realizing that an independent and effectively run judicial system is the *sine qua non* of the rule of law, ILAC will provide technical legal assistance focused on the prosecution of alleged war criminals and human rights abusers and on judicial restructuring in countries emerging from domestic or international armed conflict, and it will be committed to

effectuating the appropriate enforcement of humanitarian law and to rebuilding their legal systems. Where appropriate, ILAC will also provide services to facilitate the interaction of national and international criminal jurisdictions.

Because ILAC is comprised of international NGOs experienced in analyzing the state of legal systems and providing assistance to countries developing their national judicial systems, it will be able to respond quickly and effectively in providing needed post-conflict legal assistance.

ILAC will be firmly committed to the principles of national sovereignty. ILAC will not seek to promote a particular legal system, realizing that a broad-minded spirit towards other cultures and awareness of the strengths of different legal systems are necessary to achieve the goal of establishing effective judicial systems throughout the world.

ILAC will be premised on the belief that assistance in developing judicial systems must be undertaken with the consent of national governments. Cooperation between ILAC and national governments is necessary if ILAC assistance is to be beneficial.

ILAC will be politically neutral, and it will conduct its work in a manner that is transparent to the international community.

ILAC will be committed to a system of continuing self-evaluation, and it will reform its practices in order to best meet the needs of the victims of human rights abuses and to further the principles of justice and fairness within the international community.

III. THE STRUCTURE OF ILAC

ILAC will be a separate non-profit entity comprised of international NGOs who are actively engaged in the development of national judicial systems (*e.g.*, the American Bar Association's Central and East European Law Initiative (CEELI), the International Bar Association, Réseau des Citoyens, International Judges' Association, Soros, and Netherlands Association for the Judiciary). It will be particularly important for ILAC to be comprised of a full range of international NGOs who have proven themselves to be capable of taking on the complex and time-consuming responsibilities of post-conflict judicial reconstruction.

Pursuant to ILAC's by-laws, ILAC's members will elect an Executive Board. The Board will be comprised of five permanent members (to ensure geographical and program diversity), six rotating members, and three Government/Agency Advisory Council members.

ILAC will have a permanent headquarters and a full-time staff, consisting of a Director (who will oversee all ILAC operations); an Administrative Assistant (who will assist the Executive Director); a Fund

Raiser/Development Director (responsible for securing administrative and programmatic funding); an Outreach Coordinator (responsible for maintaining contact with members and securing personnel support for program implementation); a Program Director (responsible for all logistical support for implementing the two Rapid Response Programs, including training mission participants); a Research Director (responsible for preparing briefing papers for the ILAC missions); and an Accountant (responsible for the overall financial management of the project).

ILAC members may decide to send personnel to the permanent headquarters.

IV. THE GOVERNANCE OF ILAC

In order for ILAC to effectively accomplish its mission, particularly the provision of on-ground technical legal assistance, ILAC must gain international stature and authority. This will allow ILAC to more easily mobilize national and international support for its work and to achieve legal standing to quickly implement its programs in a host country.

The United Nations (*e.g.*, U.N. DPKO, U.N. Human Rights Center) may be an appropriate agency to undertake a cooperative role with ILAC. There is already a close working relationship between United Nations agencies and international NGOs. ILAC will also have to secure close working relations with States, which may be called upon to intervene in a post-conflict situation.

The cooperation between the United Nations and ILAC, and support for ILAC's work, could be part of a larger United Nations Standby Agreement (focused on international legal NGOs) that would permit the United Nations to utilize ILAC when responding to affected States. The paramount issue would be to ensure that ILAC could mobilize and engage rapidly under United Nations auspices.

States may also want to utilize ILAC in their unilateral response to a post-conflict situation. For instance, the United States Agency for International Development (USAID) may want to call upon ILAC to assist the agency in providing immediate assistance to a State emerging from conflict. An affected State may also appeal directly to ILAC for assistance.

V. COORDINATING MECHANISM FOR ILAC

The main programmatic objective of ILAC will be to rapidly and effectively provide assistance to post-conflict national judicial systems. In fulfilling its mission, ILAC will be able to provide two teams of legal experts to assist the host country in the post-conflict environment. ILAC

will be capable of sending two different types of teams of legal experts to assist the host country in the post-conflict environment. Depending on the needs of the affected State, one or both types of teams may be utilized.

A. Judicial Accountability Response Unit

The Judicial Accountability Response Unit (JARU) will support international efforts to bring war criminals and human rights offenders to justice. The JARU will be comprised of legal experts selected by ILAC. The JARU will work closely with the ICC or any *ad hoc* tribunal established to prosecute suspected war criminals and violators of international humanitarian law.

The JARU will remain in country and focus on the following:

- 1) Assist the government in designing a systematic approach for prosecuting war criminals and human rights offenders;
- 2) Assist the government in implementing the investigation and prosecution of war criminals and human rights offenders (including assistance to judges, prosecutors and defense attorneys);
- 3) Support the creation of local human rights NGOs which can sustain advocacy work;
- 4) Assist in mobilizing support from the international community for investigations and prosecutions, including financial assistance and cooperation in gaining evidence and extradition of indicted persons outside the country's territory;
- 5) Monitor the government's performance in implementing the system of accountability for war criminals and human rights offenders (including trial monitoring);
- 6) Serve as an objective source of information and deter the dissemination of misinformation and disinformation;
- 7) Create mechanisms to provide protection to potential witnesses fearful of physical violence;
- 8) Work with the Judicial Development Response Unit (see section *B* below) in developing a judicial system that will initiate an effective system of accountability, including assistance in building judicial infrastructure, training legal personnel, and reforming laws;
- 9) Create a *Rules of the Road* project to ensure that the process of detaining individuals by the government for serious

violations of international humanitarian law is consistent with international legal standards; and

10) Provide liaison and coordination services where appropriate to facilitate the interaction of the national justice system and the ICC or any *ad hoc* international tribunal.

B. Judicial Development Response Unit

The Judicial Development Response Unit (JDRU) will be comprised of legal experts selected by ILAC. The JDRU will be responsible for assessing the current state of the judicial system in the host country. The JDRU will use a predetermined judicial assessment model to identify which areas of the judicial system are intact, functional, and which areas need to be re-deployed, recreated or redesigned. Based on this assessment, ILAC will coordinate an outreach campaign among ILAC members and donors so that they may undertake a more long-term program of assistance and development.

The JDRU will serve as a bridge between initial peacekeeping activities and long-term assistance. Once long-term ILAC members arrive in the host country, the JDRU will continue to provide on-ground coordination during the initial phase of operation. However, once ILAC members establish their own coordinating mechanism to accomplish long-term judicial restructuring, the JDRU will relinquish involvement with the judicial restructuring program.

Long-term judicial restructuring could address the following:

- 1) Identify revisions to legislative and constitutional mandates necessary for a truly independent and effective judiciary;
- 2) Determine whether comprehensive jurisdiction is set within the judiciary on all matters relating to the application of laws, including violations of international humanitarian law;
- 3) Determine whether there is sufficient financial support for the judicial system;
- 4) Determine whether there exists a sufficient number of trained attorneys, judges, and court personnel to participate in a revitalized judicial system; and
- 5) Determine whether there are sufficient court facilities to allow the judicial system to function.

VI. CONCLUSION

There will undoubtedly be detractors of the ILAC concept. Some will say that it is simply not needed. Others will suggest that States, not NGOs, best handle post conflict rehabilitation. Still others will argue that NGOs simply are not capable of coordinating their programs in any meaningful way.

Yet, we believe ILAC is an idea whose time has come. The recent experience in Bosnia and Rwanda demonstrates that there is a vast void in a post-conflict situation, where the breakdown of the rule of law is systemic, and the need for rapid post-conflict accountability and judicial rehabilitation is essential. ILAC can become a crucial component to the international community's response to the devastation of conflict within or between states.